

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Meghan Flynn	:	
Rosemary Fuller	:	
Michael Walsh	:	
Nancy Harkins	:	C-2018-3006116
Gerald McMullen	:	P-2018-3006117
Caroline Hughes and	:	
Melissa Haines	:	
	:	
	:	
v.	:	
	:	
Sunoco Pipeline, L.P.	:	

**ORDER DENYING PETITION FOR EMERGENCY INTERIM RELIEF AND  
CERTIFYING MATERIAL QUESTION**

**HISTORY OF THE PROCEEDING**

On November 19, 2018, Petitioners/Complainants Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes and Melissa Haines filed a Petition for Interim Emergency Relief against Respondent Sunoco Pipeline, L.P. (Sunoco) at Docket No. P-2018-3006117. The Petition was filed concurrently with a Complaint against Sunoco at Docket No. C-2018-3006116. These dockets are consolidated.

Petitioners are individuals from Delaware or Chester Counties residing and/or working in close proximity to the Mariner East 1 (ME1) pipeline and/or a work-around 12-inch diameter pipeline that circumvents stopped construction on the Mariner East 2 (ME2) and Mariner East 2X (ME2X) in West Whiteland Township. ME1 is currently operational. ME2 and ME2X are not currently operational. The work-around 12 inch pipeline is a 1930s era pipeline that had been carrying petroleum products such as gasoline until Sunoco repurposed it to connect to ME2 in order to carry highly volatile liquids (HVLs).

Petitioners aver that ME1, ME2, ME2X and the workaround pipelines carrying or intended to carry HVLs are inherently dangerous and due to their location in Chester and Delaware Counties (high consequence areas), a pipeline rupture there would be catastrophic. Petitioners further contend that ME1 is being operated and the work-around pipeline is about to be operated without an adequate public awareness program, emergency notification system, or credible emergency management plan in violation of 49 CFR § 195.440. Petitioners contend that Sunoco is violating 49 CFR § 195.248 in that ME1 and the workaround pipeline are located within 50 feet of private dwellings or industrial buildings or places of public assembly without at least 4 feet of cover.

Petitioners seek an Interim Emergency Order: (1) enjoining Respondent from commencing ME2 or ME2X operations including operation of the work-around 12 inch pipeline; and (2) directing Respondent cease operations of the 8-inch ME1 pipeline until such time as the Commission has held a final hearing on Petitioners' Complaint and entered an appropriate order.

On November 26, 2018, a Hearing Notice was issued scheduling hearings on November 29 and 30, 2018.

On November 27, 2018, Sunoco filed an Answer to the Petition for Interim Emergency Relief contending the Commission recently held Sunoco's public awareness program does not merit an injunction of its pipelines in the case of *State Senator Andrew Dinniman v. Sunoco Pipeline L.P.*, Docket Nos. P-2018-3001453 et al., June 14, 2018 Order and August 2, 2018 Order. Sunoco argues this caselaw precedent is binding pursuant to 66 Pa. C.S. § 316 as it involves similar allegations and facts to the instant case. Additionally, Sunoco argues that the Commission decided ME1 is safe to operate. Sunoco contends that the depth of cover of ME1, ME2 and the 12 inch workaround pipeline are not in violation of any regulation because ME 1 and the workaround pipeline are not new construction; thus, the cover minimum of 4 feet within 50 feet of certain dwellings/buildings and gathering places pursuant to federal regulation 49 CFR § 195.200 does not apply. Further, Sunoco argues the Commission's Bureau of Investigation and Enforcement has acknowledged that the 12-inch pipeline is safe to operate. Sunoco contends it has taken reasonable steps to warn and protect the public from danger through the

implementation of a Pipeline Integrity Management Plan. Sunoco avers that granting Petitioners' relief will be injurious to Sunoco and the public interest.

Hearings were held on November 29 and 30, 2018, as scheduled. Appearing for Petitioners was Michael Bomstein, Esquire. Petitioners Nancy Harkins, Michael Walsh and Caroline Hughes testified. Timothy Hubbard and Michael Walsh also testified for Petitioners. Petitioners submitted 9 exhibits. Appearing for Respondent was Thomas J. Sniscak, Esquire, Whitney E. Snyder, Esquire, Curtis Stambaugh, Esquire, Robert D. Fox, Esquire, Neil S. Witkes, Esquire and Diana A. Silva, Esquire. John Zurcher, Gregory Noll, Anthony Gallagher, Richard Billman and Joseph Perez testified for Respondent. Sunoco submitted 29 exhibits. Appearing for Intervenor Andover Homeowners' Association, Inc. was Rich Raiders, Esquire. Appearing for Intervenor Range Resources – Appalachia, LLC was Anthony Kanagy, Esquire and Erin McDowell, Esquire. Alan Engberg testified for Range Resources. The two transcripts filed on December 3 and 4, 2018, respectively, total 613 pages. The parties filed briefs in support of their positions on December 7, 2018.

### DISCUSSION

An “emergency” is defined as “a situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.” 52 Pa. Code § 3.1. An “interim emergency order” is interlocutory. The purpose of an interim emergency order is to grant or deny injunctive relief during the pendency of a proceeding. 52 Pa. Code § 3.1. The purpose of granting injunctive relief is to maintain things as they are until the rights of the parties can be considered and determined after a full hearing. Further, the *status quo* that is to be preserved by preliminary injunction is the last actual, peaceable, lawful, and noncontested status which preceded the pending controversy. *Pa. PUC v. Israel*, 356 Pa. 400, 406, 52 A.2d 317, 321 (1947).

In *Israel*, the Pennsylvania Supreme Court also said:

The rule is ‘that the status quo which will be preserved by preliminary injunction is the last actual, peaceable [and, we may add, lawful] noncontested status which preceded the pending controversy’.

A preliminary injunction is to put and keep matters in the position in which they were before the improper conduct of the defendants commenced and to prevent them from gaining any advantage by their own wrongful acts.

*Id.* at 321-322. (citations omitted).

The standards that govern the issuance of interim emergency orders are set forth at 52 Pa. Code § 3.6. Section 3.6 requires that a petition for interim emergency relief be supported by a verified statement of facts that establishes the existence of the need for emergency relief, including facts to support the following:

- (1) The petitioner's right to relief is clear.
- (2) The need for relief is immediate.
- (3) The injury would be irreparable if relief is not granted.
- (4) The relief requested is not injurious to the public interest.

52 Pa. Code § 3.6 (b).

The Commission may grant interim emergency relief only when *all* the foregoing elements exist. *Glade Park East Home Owners Association v. Pa. PUC*, 628 A.2d 468, 473 (Pa. Cmwlth. 1993). Further, as to the first element, it is not necessary to determine the merits of the controversy in order to find that a petitioner's right to relief is clear; rather, the only required determination is that the petition raises substantial legal questions. *T.W. Phillips Gas and Oil v. Peoples Natural Gas*, 492 A.2d 776 (Pa. Cmwlth. 1985) (*T.W. Phillips*).

The party seeking relief bears the burden of proving that the facts and circumstances meet all four of the requirements in the Commission's Regulation. 66 Pa.C.S. § 332; 52 Pa. Code § 3.6(b). The burden of proof must be carried by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Petitioner's evidence must be more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa. C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Section 3.10(a) provides that an order granting or denying interim emergency relief is immediately effective upon issuance by the Administrative Law Judge (ALJ) and that no stay of the order will be permitted pending Commission review of the order. 52 Pa. Code §3.10(b) requires the ALJ to certify the question of the grant or denial of relief to the Commission as a material question in accordance with 52 Pa. Code § 5.305.

1. Whether the Petitioner's Right to Relief is Clear

For Petitioners to meet the first criteria, they need not establish entitlement as an absolute right to relief on the underlying claim. Rather, in addition to satisfying the other three elements for interim emergency relief, they must establish that the underlying claim raises substantial legal questions. *T. W. Phillips*.

The underlying claim in the instant case raises substantial legal questions including but not limited to whether Respondent is violating 66 Pa. Code §1501, which in part requires public utilities to “furnish and maintain adequate, efficient, safe and reasonable service and facilities, and make such repairs, changes, alterations, substitutions, extensions and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees, and the public.” 66 Pa.C.S. § 1501.

The *status quo* in the instant case is that ME1 is currently operational. ME2 and ME2X are not currently operational. Petitioners and Intervenor Andover Homeowners' Association, Inc. (Andover) allege that:

- (1) Sunoco's public awareness program is deficient;
- (2) Sunoco's emergency management program is deficient; and
- (3) The ME1, ME2 and ME2X pipelines carrying HVLs are so inherently dangerous that they should be enjoined from operating, regardless of the integrity of the pipeline or the risk of an accident.

N.T. 347-356.

Petitioners contend that because these three allegations are true, the public is in clear and present danger and that there is an emergency within the meaning of 52 Pa. Code § 3.1, which the Commission should remedy. Petitioners Brief at 15. Petitioners argue Sunoco is in violation of 66 Pa. C.S. § 1501; 52 Pa. Code § 59.33; and 49 CFR § 195.210(a).

Conversely, Respondent and Intervenor Range Resources – Appalachia, LLC (Range Resources) contend Petitioners have failed to meet their burden of proving by a preponderance of evidence that there is an emergency within the meaning of Section 3.1 sufficient to warrant changing the *status quo* in this case and enjoining Respondent from operating the Mariner East pipelines until the Commission renders a final decision regarding Petitioners' Complaint filed at Docket No. C-2018-3006116. Respondent and Range Resources argue Petitioners have no right to relief, much less injunctive relief, on the three above-described issues. Range Resources contends a non-compliant public awareness program with 49 CFR § 195.440 should result in a warning or compliance order with the potential for civil penalty instead of an immediate shut down of a pipeline. Range Resources Brief at 9-10.

The Commonwealth Court has held that a petitioner is not entitled to interim emergency relief where there is no evidence of an emergency. *Peoples Natural Gas Co.*, 555 A.2d 288, 291 (Pa. Cmwlth. 1989). While the Commission has previously stated that Section 3.6 “does not require a petitioner to establish the existence of an emergency,” the Commission did describe an underlying issue in the *Dinniman* case as being “whether the continued operation of ME1 will create a clear and present danger to life or property and whether the construction of

ME2 and ME2X creates a clear and present danger to life or property.” *Dinniman* (Opinion and Order entered June 14, 2018). Exhibit SPLP 10 at 33. Thus, there is an underlying issue of whether an emergency exists.

To support their claims, Petitioners Nancy Harkins and Michael Walsh testified they thought the placement of the pipelines and valve station so close to their homes was a danger. Petitioner Nancy Harkins, is a retired individual residing at 1521 Woodland Road, West Chester, Chester County for 17 years. N.T. 20. Ms. Harkins lives in Westtown Township approximately 1,100 feet from the current ME1 and other proposed pipelines. N.T. 21. Ms. Harkins’ neighbor is wheelchair bound in an electric wheelchair and he lives 60 feet from a Mariner East pipeline. N.T. 42. Ms. Harkins testified placement of an HVL line so close to her home is reckless and irresponsible. N.T. 35. Ms. Harkins did not receive a safety pamphlet from Sunoco because her home falls outside 1,000 feet from a pipeline. N.T. 600. Exhibit SPLP 41 at 4.

Michael Walsh has lived with his wife and three children on Hadley Lane in Glen Mills for 3 years. N.T. 202-204. His home is 75 yards from the proposed ME2 workaround pipeline. N.T. 206. An ME 2 valve station is approximately 1,000 feet from Mr. Walsh’s property. N.T. 207. The valve site is approximately 100 feet from Duffer’s Tavern (where there is smoking allowed on an outside patio). N.T. 211. The valve site is at a higher elevation than Mr. Walsh’s home. N.T. 215. Sunoco mailed Mr. Walsh a 2018 Public Awareness Brochure. Exhibit SPLP 41 at 4.

Caroline Hughes resides at 1101 Amalfi Drive in West Chester, Pennsylvania. N.T. 172. Her son’s school is 100 feet from a Mariner East pipeline. Her home is 1700 to 1800 feet from the pipeline. Her work address is 250 feet from a Mariner East pipeline. N.T. 174. She received two mailings (postcards) from Sunoco with general information, which said nothing about what to do in case of an emergency. N.T. 179. Ms. Hughes testified Sunoco’s public awareness plan is insufficient to form credible evacuation plans. N.T. 190.

Sunoco mails its safety pamphlets similar to Exhibit P-2, *Sunoco Public Awareness Plan*, to homeowners within 1,000 feet of the pipelines, which exceeds Pipeline and Hazardous Materials Safety Administration’s (PHMSA) 660 feet guidelines. N.T. 591, 601-602.

Mr. Perez, Vice President - Technical Services, Operations and Engineering Services at Energy Transfer Partners, testified that Mr. Walsh and Ms. Hughes were both on his mailing list and were mailed brochures for the 2018 public awareness brochures in September 2018. N.T. 585, 593. SPLP Exhibit 41, *Sunoco Pipeline L.P. Public Awareness and Emergency Response*. Mr. Perez testified Ms. Harkins<sup>1</sup> did not get a brochure because she was about 1,200 feet from the pipeline. N.T. 600.

Additionally, Mr. Perez testified that Sunoco has mailed Public Awareness brochures to 40,046 members of the affected public, 16,338 excavators, and 4,384 public officials including 3,301 emergency response organizations. Exhibit SPLP 42 at 4. Since 2017, Sunoco has invited members of the public within 1,000 feet of its pipelines to meetings on a periodic basis and has sponsored 22 meetings this year in Pennsylvania. Mr. Perez testified Sunoco mailed Petitioners' witness Hubbard two invitations to the last two meetings despite Mr. Hubbard's claim that he has not been invited. N.T. 605. Mr. Perez testified two public meetings in Chester County occurred in 2016 regarding the Mariner East project. N.T. 607. I find Mr. Perez' testimony to be credible and that it refutes some of the testimony of Mr. Hubbard regarding the lack of available emergency training. N.T. 103.

Petitioners' expert witness in emergency management, Timothy Hubbard, is a Fire Marshall/Emergency Management Coordinator of Charleston Township, Chester County since 2011, and Chief Security Officer for Downingtown Area School District since November 14, 2018. N.T. 68-70. He oversees training and management of emergencies on school property. N.T. 70. Exhibit P-3, Curriculum Vitae of Timothy Hubbard. Mr. Hubbard participated in a table top training exercise regarding Mariner East Project and planned to attend one scheduled for December 11, 2018. N.T. 72-74. He testified the ME pipelines would be approximately 700-750 feet from a middle school and the ME1 pipeline runs closer to five other schools. He has concerns about evacuating the schools as there are special needs people who are confined to battery powered wheelchairs that have a potential to spark during an evacuation and take longer

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<sup>1</sup> It is noted the record reflects counsel for Petitioners asked Mr. Perez if Ms. Fuller's name appeared on his list of persons that Sunoco had sent the brochure to in September and Mr. Perez replied her name did not appear. Ms. Fuller did not testify, and I infer counsel and Mr. Perez were actually discussing whether Ms. Harkins, the first witness, was mailed a brochure. N.T. 600.



to evacuate than running on foot to a safe location going at least a half mile uphill and upwind from a leak. N.T. 88-90. Mr. Hubbard wants more information from Sunoco regarding whether sheltering in place is an option. N.T. 103. He thinks it is a bad idea to place HVL lines next to public school facilities. N.T. 107-108.

On cross examination, Mr. Hubbard admitted to receiving the *Are you prepared to Respond to a Pipeline Emergency* pamphlet from Energy Transfer Partners. N.T. 141-142. Although I find Mr. Hubbard's testimony to be credible, I also found Sunoco's witness Mr. Noll's testimony to be credible to show Sunoco has generally been offering Mariner Emergency Responder Outreach (MERO) events similar to those depicted in the video shown at the hearing, Exhibit SPLP 27, and in the MERO PowerPoint used in Chester and Delaware Counties, Exhibits SPLP 7 and 41. Mr. Noll, Principal at GGN Technical Resources, LLC and Sunoco's emergency management expert, testified that Sunoco's emergency response outreach and training program is adequate and provides all information that is necessary for the public and emergency responders to identify a pipeline release and to respond to a pipeline-related emergency, and is consistent with industry standards and PHMSA regulations. N.T. 494-495, 496-497. SPLP Exhibit 15, Curriculum Vitae of Gregory Noll.

John Zurcher, Principal at Process Performance Improvement Consultants, LLC (P-PIC), Managing Director at The Blacksmith Group, and Sunoco's expert witnesses regarding public awareness, hazard warnings, and pipeline safety, testified that he reviewed Sunoco's public awareness program, including the direct mailings sent to the public, schools, local officials, and emergency responders. N.T. 379-392, 397-399, Exhibits SPLP 17 (Curriculum Vitae of Mr. Zurcher), 18 (*Facts about Pipeline Safety in Your Community*), 19 (*Are You Prepared to Respond to a Pipeline Emergency?*) and 31 (*Energy Transfer Standard Operating Procedures Public Awareness Plan*). Mr. Zurcher testified that not only is Sunoco's public awareness program sent directly to the affected public who are located near one of its pipelines, Sunoco also maintains the same information on its website for anyone to review and access. N.T. 381.

Mr. Zurcher was a member of the committee that originally drafted the industry standards for public awareness plans, which were ultimately adopted in the PHMSA regulations

at 49 C.F.R. § 195.440. N.T. 372. Mr. Zurcher has consulted with pipeline companies and reviewed public awareness programs for hundreds of different companies and has been an independent auditor of public awareness programs. N.T. 372, 373-374. Mr. Zurcher explained that the public awareness mailings contain standardized instructions for a reason – PHMSA and the pipeline industry want the information communicated to the public and emergency responders to be standard so that there is no confusion about how to identify the location of a pipeline, how to identify a pipeline release, and what to do in response to a pipeline-related emergency. N.T. 372-373.

Mr. Zurcher stated that in his expert opinion, Sunoco's public awareness program is appropriate, adequate, meets industry standards, and complies with PHMSA regulations, and most importantly, communicates all information that is necessary for the public to know: (1) where Sunoco's pipelines are located by the comprehensive marker system; (2) how to recognize a release by sight, smell, and sound; and (3) what to do in the event of a pipeline-related emergency. N.T. 382-384, 389-390, 392-399.

Petitioners' expert witness in mechanical engineering and risk/consequence analysis, Jeffrey Marx, is a Senior Engineer with Quest Consultants, Inc. who, in the course of preparing a previous report, became familiar with the proximity of Mariner pipelines to homes and facilities in Chester and Delaware Counties. N.T. 236-237, 277. Exhibit P-4, Curriculum Vitae Jeffrey Marx. The pipeline is 80 to 500 feet from the Wellington Senior Living Center to the Mariner Right of Way (ROW). N.T. 279. The Exton County Library is within tens of feet of the same ROW. (N.T. 279). Duffer's Tavern is 30-40 feet away from Mariner Pipelines. (N.T. 278). The valve station is adjacent to Duffer's Tavern. (N.T. 278), less than one hundred feet south. (N.T. 207). Sunoco is believed to operate ME1 valve sites at intervals of between five and ten miles. (N.T. 260). In two situations, Sunoco could be required to evacuate the entire contents of ME1 without any notice or opportunity for planning. First, if a valve site failure or pipeline failure were to occur, the entire contents of a pipeline segment would immediately be discharged from the pipeline. Second, if for other reasons, Sunoco were required to de-inventory a pipeline segment, the entire contents of the pipeline would likely be routed to relief at a valve site. (N.T. 299-300).

Exhibit P-5 is entitled, *Quantitative Risk Analysis for the Mariner East Pipeline Project* by Quest Consultants, Inc. dated October 16, 2018. After this exhibit was admitted into the record, during Petitioners' expert witness Marx' cross-examination regarding the report, it was withdrawn. N.T. 277, 302, 330. Petitioners offered insufficient evidence to show there is a high probable risk of a release from any of the valve sites, areas where horizontal direction drilling (HDD) entered or exited the ground close to the surface, or where the ME1 or ME2 pipelines are co-located. There is evidence of the location of one valve site near the Andover development, near Duffer's Tavern. N.T. at 435-436. Although I find the valve site is approximately 100 feet from a restaurant, this alone is insufficient to establish a clear and present danger, or an imminent safety risk at that valve site, or any other location along the ME1 or ME2 pipelines warranting the requested injunctive relief.

Without evidence regarding pipeline integrity, the risk or probability of fatalities regarding ME1 or ME2, or evidence of past releases along the Mariner East Project, Petitioners have failed to show a clear and present a danger to human life or property within the meaning of 52 Pa. Code §3.1. Petitioners' claims and arguments as to the hypothetical consequences of a release from the pipelines have little foundation. I have considered the photographs showing proximity of residences and schools to the pipelines in Exhibits P-1(a)(b) and(c), as well as the testimonies of Ms. Harkins, Mr. Walsh, Ms. Hughes, and Mr. Hubbard, all of whom I find credible to find there are high consequence areas in Chester and Delaware Counties where the Mariner East pipelines traverse. Even Mr. Zurcher testified this case involves high consequence areas.

However, the *Rupture of Hazardous Liquid Pipeline With Release and Ignition of Propane, Carmichael, Mississippi, November 1, 2017, Accident Report* (Exhibit P-6) was already deemed insufficient support for interim emergency relief in the *Dinniman* matter. Exhibit SPLP 10 at 34. Injunctive relief requires sufficient evidence to demonstrate that an emergency condition exists, that it is more probable than not that an emergency will occur imminently, and that it is necessary to preserve the *status quo* before the Commission's next public meeting. See 52 Pa. Code § 3.1 (definition of "emergency" that requires action before next Commission public

meeting); *see also* *Petition of Norfolk Southern Railway Co.*, 2011 WL 612282 at \*12 (“the purpose of emergency relief is to preserve the status quo pending the disposition of the underlying proceeding”).

I have considered Petitioners expert witness Marx’s seven conclusions in Exhibit P-7, Marx Conclusions; however, Conclusion No. 2 opines persons residing, working, shopping or recreating within ¼ mile of ME1 or up to approximately ½ mile of the proposed hybrid workaround HVL pipeline have an increased risk of injury, property damage and death from these pipelines. Exhibit P-7. As Petitioners withdrew the *Quantitative Risk Analysis for the Mariner East Pipeline Project* (Exhibit P-5) upon which these opinions were based, the opinions lack the underlying foundation that is required for an expert opinion under the Pennsylvania Rules of Evidence. Exhibit P-7, Marx Conclusions. *Pickford v. Pennsylvania-American Water Co.*, C-20078029, 2009 WL 1514962 (Order May 14, 2009). Therefore, I am not relying upon the conclusions in Exhibit P-7 as they are without foundation. N.T. at 329-330.

Even if I were to consider and give weight to Mr. Marx’s conclusions, he admitted that his analysis is generic. N.T. at 331. The generic model assumes an HVL is being carried through pipelines of comparable diameter, but there was no testimony regarding the age or mechanical properties of the pipeline. N.T. 331-332. He did not consider the integrity of the pipelines or history of releases of ME1 when he made his conclusions. He did not factor into his analysis the operating practices of Sunoco. The analysis is devoid of mechanical analysis and conservatively assumed people are present 24 hours a day, 365 days a year at locations surrounding the pipelines. Mr. Marx’s analysis assumes that no one responds or takes any action in response to a pipeline release, no one tries to get away from the hazards, neither Sunoco nor emergency responders respond to an event, and no one acts in any way to mitigate a release once it occurs. N.T. at 329. Thus, the conclusions are not persuasive as they are based upon non-specific general assumptions in a risk model. N.T. at 584-607.

Lastly, Petitioners conceded that the probability or risk of the catastrophic events including fatalities is not something they were attempting to prove. N.T. 327-328. Petitioners’ argument that the showing of a consequence without the risk of consequence is sufficient to meet

the standard of an emergency is not persuasive. Therefore, I find in favor of Sunoco on this issue.

2. Whether the Need for Relief is Immediate

The need for relief is not immediate where the complained of events are not imminent, or likely to occur. *Application of Fink Gas Company for Approval of the Abandonment of Service by Fink Gas Company to 22 Customers Located in Armstrong County, Pennsylvania, and the Abandonment by Fink Gas Company of all Natural Gas Services and Natural Gas Distribution Services*, Docket No. A-2015-2466653, 2015 Pa. PUC LEXIS 408, \*21-22 (Order entered Aug. 20, 2015)(*Fink*); *see also Zebra v. School Dist.*, 206 A.2d 748, 752 (Pa. 1972).

Petitioners and Andover Homeowners' Association argue with the workaround pipeline coming online, there could be more fatalities in a densely populated area than would be expected in a remote setting. A random spark set off by smokers at Duffer's Tavern next to a leaky valve site could endanger scores of patrons as well as Andover residents next door. Petitioners' Brief at 26-27. Conversely, Respondent and Range Resources contend in the absence of the probability of an event occurring, there can be no clear and present danger or immediate need for relief, no matter what the worst-case consequences of a theoretical event may be. SPLP Brief at 42.

I find Petitioners have failed to demonstrate that the need for relief is immediate in that they presented no evidence regarding the likelihood, *i.e.* risk, of a fatality occurring due to an accidental leak on any of the Mariner East Projects. While objecting to Sunoco's cross examination of Mr. Marx regarding the document identified as Exhibit P-5, Petitioners' counsel, Attorney Bomstein, stated:

MR. BOMSTEIN: If I may, for the record, may I renew the objection? Our case has not been about the frequency of events or risk analysis, it's solely in the event that something happens, this is what is likely to occur. That's consequence analysis. All of the cross-examination on this point is entirely beyond the scope, and it doesn't go to credibility either. It's entirely objectionable.

N.T. 327. Attorney Bomstein further stated:

This particular aspect of the report has nothing to do with the case, because as Mr. Marx stated at the beginning, risk, as he uses it, is a function of both frequency and consequences. We have not talked about frequency. We've conceded that the relative incidence of [the complained of] events is small.

N.T. 328.

Although comments from Petitioners' attorney does not constitute evidence, it appears from Mr. Bomstein's statements that the Petitioners have conceded that the probability of a fatality from a highly volatile liquids ("HVL") pipeline is small. Without more evidence to show an imminent safety risk at the valve site near Duffer's Tavern or anywhere else along the pipelines, Petitioners have failed to meet their burden of showing the need for injunctive relief is immediate. Therefore, I find in favor of Sunoco on this issue.

3. Whether the Injury Would be Irreparable if Relief is not Granted

In determining whether an injury is irreparable, the Commission considers "whether the harm can be reversed if the request for emergency relief is not granted." *Fink*, 2015 WL 5011629, at \*9 (Pa. P.U.C. Aug. 20, 2015). Monetary losses can satisfy the irreparable injury requirement of 52 Pa. Code § 3.7(a). *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 615 A.2d 951 (Pa. Cmwlth. 1992). Environmental damage can also be considered. *Commonwealth v. Kennedy*, 87 A.2d 605 (Pa. 1913). In the instant case, although I agree with Petitioners that the harm or consequence resulting from a rupture or explosion on ME1 or the workaround pipeline (or both in a cascading event) could result in irreparable harm, Petitioners have failed to meet their burden of proving they would be injured irreparably if the relief is not granted. Petitioners Brief at 27. As Petitioners conceded the risk of fatalities is small, they have failed to show they would more likely than not be injured irreparably either through fatalities, personal injury or loss of property during the pendency of this consolidated complaint proceeding. For these reasons, I find in favor of Sunoco on this issue.

4. Whether the Interim Emergency Relief will be injurious to the public

Petitioners argue that the temporary cessation of operations of ME1 and construction of the ME2 workaround pipeline would result in the public gaining temporary protection from the possibility of a catastrophic event at Little League fields, elementary schools, senior citizens centers and thousands of homes and businesses in Chester and Delaware Counties. Petitioners' Brief at 28. Conversely, Respondent contends Petitioners have not established that a shutdown of ME1 and ME2 pipelines will not cause injury to Sunoco or the public interest. I find Petitioners' assertion without evidence of probability of such a catastrophic event is insufficient to meet the standard.

Sunoco and Range Resources offered credible evidence that they would be financially negatively impacted if the injunctive relief would be granted. N.T. 518-534, 557-583. Exhibits SPLP 41 and 42. I find Sunoco's witnesses' Gallagher and Billman testimonies to be credible. Mr. Gallagher is the business manager of Steamfitters Local Union 420. N.T. 545. Mr. Billman is the Vice President of Business Development for Energy Transfer Partners and Sunoco. N.T. 567 and 568. I also find Range Resources' witness Engberg to be credible. Mr. Engberg is Vice President of Liquids Marketing for Range Resources. N.T. 515. Shutting down service on ME1 and enjoining the commencement of ME2 will directly and significantly negatively impact Sunoco and its shippers, including Range Resources. N.T. 518-534, 557-583. Additionally, some job losses and/or layoffs to steamfitters and other workers during the holiday season in the Marcus Hook Facility may occur. N.T. 544-567. For these reasons, I find in favor of Sunoco on this issue.

### CONCLUSION

In conclusion, Petitioners/Complainants have failed to demonstrate by a preponderance of the evidence that they have met all four requirements and are entitled to emergency interim relief pursuant to 52 Pa. Code § 3.6. Petitioners have not satisfied any of the four requirements. Accordingly, the relief requested will be denied in the Ordering paragraphs below. Pursuant to the Commission's Rules of Practice and Procedure, this Order shall be immediately certified to this Commission for consideration and disposition in accordance with 52 Pa. Code § 5.305, pertaining to interlocutory review of a material question submitted by a presiding officer. 52 Pa. Code § 3.10(b). The Commission will conduct further proceedings

after the Commission has ruled on this order denying interim emergency relief pursuant to 52 Pa. Code § 5.305.

**THEREFORE,**

**IT IS ORDERED:**

1. That the petition for interim emergency relief, filed on November 19, 2018 by Meghan Flynn, Rosemary Fuller, Michael Walsh, Nancy Harkins, Gerald McMullen, Caroline Hughes, and Melissa Haines at Docket No. P-2018-3006117 is denied.

2. That the denial of relief by interim emergency order in the consolidated proceedings at Docket Numbers P-2018-3006117 and C-2018-3006116 is certified to the Commission as a material question requiring interlocutory review.

3. That a copy of this order shall be served upon the Commission's Bureau of Investigation and Enforcement and Bureau of Technical Utility Services.

Date: December 11, 2018

\_\_\_\_\_/s/  
Elizabeth Barnes  
Administrative Law Judge



**C-2018-3006116, P-2018-3006117- MEGHAN FLYNN, ROSEMARY FULLER,  
MICHAEL WALSH, NANCY HARKINS, GERALD MCMULLEN, CAROLINE HUGHES,  
MELISSA HAINES V. SUNOCO PIPELINE LP**

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